
OPINION OF TRUSTEES

In Re

Complainant: Disabled Dependent
Respondent: Employer
ROD Case No: 88-368 - May 8, 1991

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee; Thomas H. Saggau, Trustee.

Pursuant to Article IX of the United Mine Workers of America ("UMWA") 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits for home health services for a disabled dependent under the terms of the Employer Benefit Plan.

Background Facts

Since 1985, the Complainant has received home health services for care related to his physical impairment of traumatic spastic quadraplegia. He suffers from entire lower body paralysis and partial paralysis of the arms, thus necessitating assistance with transfers to and from his bed and wheelchair and personal care (e.g., bathing and dressing). The home health services consist of visits three times a week by a licensed practical nurse to monitor vital signs, medications, edema and chest sounds and to provide bowel and external catheter care.

The Employer has provided benefits for home health services rendered prior to October 31, 1990. The Employer contends that the care the Complainant is receiving is no longer considered skilled care and it has denied benefits for services rendered after October 31, 1990.

Dispute

Is the Employer required to provide benefits for home health services rendered to the Complainant after October 31, 1990?

Positions of the Parties

Position of the Complainant: The Employer is required to provide benefits for home health services rendered to the Complainant because such services are necessary and have been covered for the past 5 years.

Position of the Respondent: The Employer is not required to provide benefits for home health services rendered after October 31, 1990 because the Complainant's condition has stabilized, the care he receives can be carried out by a personal attendant, and such care is not considered skilled nursing care.

Pertinent Provisions

Article III. A. (6) (a) and (c) of the Employer Benefit Plan states:

(6) Home Health Services & Equipment

(a) General Provisions

Benefits are provided for home health services, including nursing visits by registered nurses and home health aides, and various kinds of rehabilitation therapy, subject to the following conditions, and approval of the Plan Administrator.

1. The Beneficiary must be under the care of a physician.
2. The Beneficiary's medical condition must require skilled nursing care, physical therapy, or speech therapy at least once in a 60-day period.
3. The physician must initiate a treatment plan and specify a diagnosis, the Beneficiary's functional limitations and the type and frequency of skilled services to be rendered.
4. The Beneficiary must be confined to his home. The services must be provided by a certified home health agency.

(c) Skilled Nursing

Benefits are provided for skilled nursing care rendered by a registered nurse as a home health service when a Beneficiary's condition has not stabilized and a physician concludes that the Beneficiary must be carefully evaluated and observed by a registered nurse. The Plan Administrator may request an evaluation visit to the Beneficiary's home.

Discussion

Article III. A. (6) of the Employer Benefit Plan provides benefits for home health services, including visits by registered nurses and home health aides, under certain conditions and subject

to the approval of the Plan Administrator. Benefits are not provided, for example, unless the Beneficiary's medical condition requires skilled nursing care at least once in a 60-day period. Skilled nursing care is generally considered to encompass those services that are reasonable and necessary for the treatment of an illness or injury and which must be performed by or under the direct supervision of a licensed nurse if the safety of the patient is to be assured and the medically desired result is to be achieved.

The Employer has denied benefits for home health services rendered to the Complainant since October 31, 1990, stating that the Complainant no longer receives skilled nursing care. A Funds' medical consultant has reviewed the evidence submitted in this case, including physician's orders and nursing notes pertaining to the Complainant's home health services. The consultant has advised that the Complainant's nursing requirements have stabilized and are primarily related to bowel care to prevent impaction and care of his external urinary catheter. The consultant advises that, in both instances, the procedures involved do not require the skills of licensed personnel and can be performed by the average non-medical person following a reasonable amount of training and instruction by a registered nurse. The consultant has advised that the care being given to the Complainant is not skilled nursing care. Accordingly, the Employer is not required to provide benefits for home health services rendered after October 31, 1990. The fact that benefits were provided for such services prior to October 31, 1990 does not make the services in question covered benefits under the terms of the Employer Benefit Plan.

Opinion of the Trustees

The Employer is not required to provide benefits for home health care services rendered to the Complainant after October 31, 1990.